IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

CRP.No. 1044 of 2007

AGAINST THE ORDER DATED 24/10/2007 IN EP.184/2005 IN OS.92/2004 of MUNSIFF COURT, VAIKOM
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REVN. PETITIONER/JUDGMENT DEBTOR/DEFENDANT:

VINOD KUMAR S., AGED 38, S/O. SUKUMARAN NAIR, USHUS, UDAYANAPURAM KARA, VADAKKUMURI VILLAGE, VAIKOM TALUK.

BY ADV. SMT.AYSHA YOUSEFF,
SRI.V.K.SIDHIQUE,
SMT.K.A.SANJEETHA,
SRI.T.K.NAZAR.

RESPONDENTS/ DECREE HOLDER/ PLAINTIFF:

SUKUMARAN, AGED 33, S/O. VELAYUDHAN, THURUTHEL HOUSE, KAROOR KARA, LALAM VILLAGE.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29/11/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 1044 OF 2007

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Dated this the 29th day of November, 2007.

O R D E R

This revision petition is preferred with a prayer to set aside the order of the Munsiff, Vaikom in E.P.184/05 whereby he has directed the property to be sold in auction. The revision petitioner is the judgment debtor. The plaintiff has obtained a decree against him and the decree liability comes to about Rs.1 lakh. The decree holder wants to sell 22 cents of land for realisation of the decree debt. The Court has fixed the upset price at Rs.4,90,000/-. The said amount is fixed on the basis of the valuation shown in the document of title of the judgment debtor. The Apex Court as well as this Court in very many decisions had stated about the importance of the sale of property and had laid down the principle that the Court has to apply its mind to find out whether the entire property has to be sold in auction for the purpose of realisation of the amount. It appears that the Court has not considered this aspect most probably because the judgment debtor did not raise such a contention. Further, it is alleged

that there is a mortgage in favour of the Bank. When a property is sold in public auction and there is mortgage over the property, certainly it has to be shown in the proclamation for sale because the purchaser has to know that there is liability on the property and that he has purchased the property with the liability. Without showing these details if sale is conducted the auction purchaser will be put into undue hardship. Therefore, I set aside the order passed by the Court below and direct the Court below to consider whether the entire extent of the property is to be sold for realisation of the decree debt and further direct the revision petitioner herein to produce some document to show that there is a mortgage of the property with I.C.I.C.I. Bank and incorporate that also in the proclamation and thereafter sell the property. Therefore, the Court below is directed to defer the sale and pass a fresh order after hearing both sides in accordance with law.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-